

Donald R. Earl (pro se)
3090 Discovery Road
Port Townsend, WA 98368
(360) 379-6604
don-earl@waypoint.com
Purported Class Member

FILED
OCT 14 P 4:50
RICHARD W. WIEKING
DISTRICT COURT
SAN JOSE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JEFFREY SCHULKEN AND JENIFER)	Case No. C-09-02708-LHK
SCHULKEN, individuals, on their own)	
behaves and on behalf of all others similarly)	For hearing on: October 16, 2014 @ 1:30
situated (Plaintiffs))	
)	Judge: The Honorable Lucy H. Koh
v.)	
)	
WASHINGTON MUTUAL BANK,)	PURPORTED CLASS MEMBER DONALD
HENDERSON, NEVADA; JPMORGAN)	R. EARL'S RESPONSE TO PLAINTIFFS'
CHASE BANK, N.A. (Defendants))	MOTION FOR CONTEMPT AGAINST
)	OBJECTOR DONALD R. EARL

1. INTRODUCTION

Purported Class Member, Donald R. Earl, hereby respectfully submits this response to the *Plaintiffs' Motion for Contempt Against Objector Donald R. Earl* and requests the relief sought in part 2.

2. RELIEF SOUGHT

Deny the Plaintiffs' Motion for Contempt Against Objector Donald R. Earl.

3. FACTS AND BACKGROUND

On April 2, 2013 this Court entered an order pursuant to FRCP 7 for Mr. Earl to post a bond in the amount of \$5,000, which was based on the Plaintiffs unsubstantiated claims of taxable expenses. The Plaintiffs did not ask this Court to set a date by which the bond should be posted, nor did the Court specify such a date on its own initiative.

1 To date, the only taxable expense incurred by the Plaintiffs is, at most, a few hundred
 2 dollars for copies of appellate briefs at the allowed cost of ten cents per page. Mr. Earl bore
 3 the cost of the filing fee. Mr. Earl bore the cost of transcribing records. Neither party paid any
 4 costs for transferring records, which is accomplished electronically at no cost to any party.

5 At the Court of Appeals level, the Plaintiffs sought to dismiss Mr. Earl's appeal on the
 6 grounds the appeal is frivolous. The Ninth Circuit rejected the Plaintiffs' arguments and
 7 denied the motion. The Plaintiffs also sought to dismiss the appeal on the identical grounds
 8 now being presented to this Court in the motion at bar. The Court of Appeals rejected those
 9 arguments and denied that motion a full year ago.
 10

11 4. RESPONSE, AUTHORITY AND ARGUMENT

12 At page 2, the Plaintiffs cite *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983)
 13 out of context. The relevant passage reads as follows:
 14

15 "Absent a stay, all orders and judgments of courts must be complied with *promptly*. In
 16 the present case the bond requirement was not stayed. The record clearly demonstrates
 17 that the Secretary established a prima facie case that the individual appellants failed to
 18 comply with *the district court's order requiring them to post the bond by*
September 7." (Emphasis added, internal quote marks and citations omitted)

19 As defined by the *American Heritage Dictionary of the English Language, Fourth*
 20 *Edition* (2009), "prompt" means, "*1. Being on time; punctual.*"

21 For Mr. Earl to be in contempt there necessarily must be some point in time at which
 22 the alleged contempt began to run, i.e. a specific date on which Mr. Earl was other than
 23 "prompt" through failing to be on time or punctual. There is no such date in this matter.
 24

25 Mr. Earl is not in contempt of the Court's April 2, 2013 order.

26 There is no point in time that may be identified -- on any cognizable legal, factual or
 27 equitable ground -- at which Mr. Earl may be said to be in contempt of the order. The
 28

1 Plaintiffs cite no authority that would create a presumption to the contrary. In the absence of a
2 date certain by which compliance is mandated by a court, there can be no contempt. Mr. Earl
3 is no more in contempt than is anyone subject to a court order at some point in time prior to a
4 date certain set by a court by which compliance with an order to perform some act is
5 mandated by that court.

6
7 As noted in the Plaintiffs' motion, the Plaintiffs admit presenting the same arguments
8 to the Court of Appeals a year ago -- arguments the Plaintiffs now ask this Court to consider
9 in an apparent attempt to obtain a decision from this Court in conflict with the decision
10 previously rendered by the Court of Appeals. The Ninth Circuit rejected the Plaintiffs' same
11 arguments a year ago, denying the Plaintiffs' essentially identical motion.

12
13 At page 4 of the Plaintiffs' motion, the Plaintiffs state, "*this Court should follow the*
14 *Ninth Circuit's direction*".

15 Mr. Earl agrees. The Ninth Circuit rejected the Plaintiffs' identical arguments a full
16 year ago. This Court should follow the Court of Appeals' direction and reject the Plaintiffs'
17 attempt to re-litigate a matter already settled by the Ninth Circuit.

18
19 5. CONCLUSION

20 For the above reasons, purported class member, Donald R. Earl, respectfully prays the
21 Court deny the Plaintiffs' Motion for Contempt Against Objector Donald R. Earl.

22
23 Dated: July 9, 2014
24 Respectfully submitted by:



25 Donald R. Earl (pro se)
26 3090 Discovery Road
27 Port Townsend, WA 98368
28 (360) 379-6604

CERTIFICATE OF SERVICE

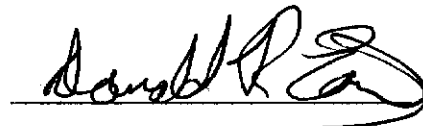
I, Donald R. Earl, hereby certify that on the 9th day of July, 2014, pursuant to mutual agreement by the parties to accept service by email, I sent a copy of "Purported Class Member Donald R. Earl's Response to Plaintiff's Motion for Contempt Against Objector Donald R. Earl" and Proposed Order by electronic mail to:

Plaintiff's counsel of record, Jay Edelson, at jedelson@edelson.com

And to:

Defendants' counsel of record, LeAnn Pederson Pope, at lpope@burkelaw.com

Dated: July 9, 2014
Respectfully submitted by:



Donald R. Earl (pro se)
3090 Discovery Road
Port Townsend, WA 98368
(360) 379-6604

Donald R. Earl (pro se)
3090 Discovery Road
Port Townsend, WA 98368
(360) 379-6604
don-earl@waypoint.com
Purported Class Member

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JEFFREY SCHULKEN AND JENIFER)	Case No. C-09-02708-LHK
SCHULKEN, individuals, on their own)	
behaves and on behalf of all others similarly)	Judge: The Honorable Lucy H. Koh
situated (Plaintiffs))	
)	
v.)	
)	
WASHINGTON MUTUAL BANK,)	(proposed) ORDER DENYING PLAINTIFFS.
HENDERSON, NEVADA; JPMORGAN)	MOTION FOR CONTEMPT AGAINST
CHASE BANK, N.A. (Defendants))	OBJECTOR DONALD R. EARL

THIS MATTER having come before the Court upon "Plaintiff's Motion for Contempt Against Objector Donald R. Earl", filed on June 27, 2014, the Court having reviewed the records and files, the Court finds the Plaintiffs' Motion should be denied.

It is hereby:

ORDERED, ADJUDGED AND DECREED the "Plaintiffs' Motion for Contempt Against Objector Donald R. Earl" is denied.

IT IS SO ORDERED

Dated: _____, 2014

The Honorable Lucy H. Koh
U.S. District Court Judge

(proposed) ORDER DENYING PLAINTIFF'S
MOTION FOR CONTEMPT

Case No. C-09-02708-LHK